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Thesis

THE HISTORY OF INSANITY AS A DEFENCE FOR CRIMINAL ACTIVITY IN MASSACHUSETTS

by

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FOREWORD

This paper is an attempt to show, mainly through the interpretations of the laws as recorded in the state reporter system, the development and the present status of the defence of insanity in regard to criminal responsibility in Massachusetts.

It is not an effort to summarize the laws of other states.

It is not, deliberately, a description of fiendish crimes, or an outline of the care and treatment given insane prisoners, or the picture of the typical court-room procedure at a criminal trial.

Though all of these components of the legal machinery are important in themselves, in relation to each other, and altogether contribute to the practical working of the law, this thesis is an earnest endeavor to point out, only, the changes which have taken place in the legal conception of the degree of insanity sufficient to relieve the defendant of criminal responsibility.

The criminal law, for the most part, remains precisely as it was a hundred years ago. The changes in ways of living over the years have made obsolete some crimes and introduced other "criminal" acts. But the concept of the criminal actor and his personal responsibility for his deeds has been little altered

by the increasing knowledge of doctors and psychiatrists of the functioning of the mind, especially in an abnormal condition, and its influence on the actions of the individual.

What I wish to emphasize is, that because of the persistency in the law of the early theological explanations of human behaviour, explanations which have largely been discredited by modern medicine, it is difficult to incorporate medico-psychiatric knowledge in the law of insanity.

INTRODUCTION

The basis of the law in Massachusetts is today almost exactly what it was in the first days of the Colony's settlement. The belief to which the Puritans tenaciously clung, that every man is a free moral agent, has been inculcated in every generation since in one guise or another. In the law of the land it has been expressed time and again to the effect that every man has "freedom of will and responsibility for acts flowing therefrom."[1]

In tracing any phase of the development of law in Massachusetts it is apparent that changes in keeping with the times have been few. Especially has this been so in the evolution of the legal status of insanity as a defence for criminal activity. Each change has been brought about, not by a substitution of more intelligent assumptions for, or even by an alteration of, the old assumptions in this section of the law but by the mere addition of laws to the antiquated basis. Contradicting the old theory that all persons have freedom of choice and consequent responsibility for their actions, the new conceptions of criminal responsibility have had to be subtly tacked on as

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[1]Sheldon Glueck, "Mental Hygiene and Crime", Readings in Mental Hygiene, ed. Ernest R. Groves and Phyllis M. Blanchard (New York, 1936), p. 97.

afterthoughts to the original proposition. In the main, however, the only laws which could possibly have followed from the original assumptions have been made and they continue to form the structure of the body of law pertaining to the defence of insanity.

Returning to the basic assumptions in the criminal law with reference to insanity as a criminal defence, it is obvious that they themselves resulted quite logically from the hard and fast theological dictum of Colonial days that every individual was free to choose his own line of action.

The most important assumption of all, second only to the freedom-of-will-and-responsibility-for-ensuing-acts clause, and issuing from it, is the presumption of sanity. At the same time that it is assumed that every man can himself direct his action it is also implied that every man has the mental ability to do that directing. Therefore, every man, law-abiding or criminal, is considered sane. As late as 1856, in a trial for murder where the sanity of the slayer was questioned, the Judge in his instructions to the jury said in part:

> The law infers, from the fact that a prisoner is a human being, of sufficient age to be deemed capable of committing crimes, the further fact that he is a reasonable being, that is, that he is of sane mind.[2]

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[2]Commonwealth v. Eddy, 7 Gray 583.

Only a few years ago, in a 1944 case, the same idea was similarly expressed:

> The propriety of an inference or even a technical presumption that the condition of a person or thing, or the conduct of a person, is normal and customary, has often been recognized.[3]

In every trial it is presumed that the defendant is sane. It rests upon the defendant himself to interject a question regarding his sanity. He may do this before the trial commences by making a special plea or he may raise the issue at any time during the trial. Immediately that the doubt of sanity has been introduced the government has the burden of proving the defendant's sanity. In other words, it is the duty of the defendant to raise the question of his criminal responsibility and it is the obligation of the government to prove his criminal responsibility. The issue of sanity is determined then, not as a matter of law, but as a matter of fact by the jury, by weighing the evidence of sanity PLUS the presumption of sanity against the evidence of insanity. A clear explanation of this practise which also stresses the emphasis to be placed upon the presumption of sanity appeared in 1844:

> The ordinary presumption is, that a person is of sound mind, until the contrary appears; and in order to shield one from criminal responsibility the presumption must be rebutted by proof of the contrary, satisfactory to the jury. Such proof may arise, either out of the evidence offered by the prosecutor to establish the case

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[3]Epstein v. Boston Housing Authority, 317 Mass. 297.

> against the accused, or from distinct evidence, offered on his part; in either case, it must be sufficient to establish the fact of insanity; otherwise, the presumption will stand.[4]

The duty of the jury is even better put forward in Commonwealth v. Cooper.

> But the question is not to be finally settled by medical science or by legal definition from the bench, although each may be of material assistance to the jury. It is the duty of the judge to state clearly and sufficiently what the jury are to decide by a careful discrimination between the law and the facts which they may find upon the evidence.[5]

The fact that the presumption of sanity, unlike other legal presumptions which fade away with the first introduction of contrary evidence, exists all through the trial, further illustrates the tendency of the law to strongly favor the notion that all men are sane. The presumption can withstand evidence for:

> Although the burden of proof is on the Commonwealth to prove the defendant mentally responsible for crime, the fact that a great majority of men are sane, and the probability that any particular man is sane, may be deemed by a jury to outweigh, in evidential value, testimony that he is insane. This is the effect of what was said in 204 Mass. 358, 212 Mass. 438, 257 Mass. 21, although the form of expression may be criticized on the

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[4]Commonwealth v. Rogers, ~~48~~ 7 Met. 500.

[5]Commonwealth v. Cooper, 219 Mass. 1.

> ground that in truth it is not, as stated in those cases, the presumption of sanity that may be weighed as evidence, but rather the rational probability on which the presumption rests.[6]

A fuller explanation of the functioning of the presumption in relation to the burden of proof was contained in the Epstein case:

> There is nothing inconsistent in casting the burden of proof upon a party, and then helping him sustain his burden by creating a presumption in his favor that throws upon his adversary the burden of going forward with the evidence. The distinction between the burden of proof and the burden of going forward with evidence has long been recognized by this court. Indeed, a presumption, using the word in its technical and proper sense, can have no operative effect unless it assists the party having the burden of proof.[7]

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[6]Commonwealth v. Clark, 292 Mass. 409.

[7]Epstein v. Boston Housing Authority, 317 Mass. 297.

CHAPTER I

WHAT IS A CRIME?

In order to be responsible for a crime the individual must have had the necessary purpose and intent to do the criminal act and he must have committed the act.

> ...the jury must be satisfied not only that he did the act charged, but that he was a responsible agent.[8]

One factor without the other disqualifies the action of the person as criminal. No amount of malicious speculation about or contemplation of an illegal act can make a person a criminal. Likewise, the lack of intent and wilful purposing on the part of the person who has done an act, though criminal in nature, erases the act as a crime.

> And, as a vicious will without a vicious act is no civil crime, so, on the other hand, an unwarrantable act without a vicious will is no crime at all. So that to constitute a crime against human laws, there must be, first, a vicious will; and, secondly, an unlawful act consequent upon such vicious will.[9]

In Commonwealth v. Gilbert the first requested instruction to the jury was:

> The jury must be satisfied, in order to convict the prisoner, not only of the

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[8]Commonwealth v. Heath, 11 Gray 303.

[9]Blackstone, quoted by Albert J. Harno, Cases and Materials on Criminal Law and Procedure, (2nd ed., Chicago, 1939), p26.

> acts which constitute murder, but that they proceeded from a responsible agent, one capable of committing the offence.[10]

The judge's instructions included this one in different words:

> Now one thing which is essential to the guilt of the defendant is to show that this defendant has committed the crime. And it is a general rule of law that, in order to be able to commit a crime, a person who is charged with its commission must have intelligence and capacity enough to have a criminal intent and purpose. At any rate, when the charge is of the commission of such a crime as this, if he was not capable of a criminal intent and purpose, if he had no criminal intent and purpose in what he did, then he cannot have been guilty of a crime in doing what he did.[11]

As we have mentioned before at length, the basic assumptions of our Massachusetts' law state that any man is capable of choosing his own ways of living, and when his ways are contrary to the rules of ordered society, he being a responsible individual, is liable to punishment. But if, for some reason, he has not the power to form an intent to commit a specific crime, he cannot be held responsible for the act.

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[10]Commonwealth v. Gilbert, 165 Mass. 45.

[11]Ibid.

CHAPTER II

WHAT IS INSANITY?

Those rules which make up the body of law of Massachusetts comprise a standard which is supposed to govern the conduct of every individual within the Commonwealth. Every law has been made in the interest of the general well-being of the people: for their protection a certain type of socially acceptable behavior has been set up as a model, deviations from which entail punishment in kind. The purpose of the law, over and above the protection of the individual, is the protection of the larger entity, the society. Consequently, the more serious the offense against the safety of the public welfare the more difficult it is to evade punishment. Defences which purport to prove inability to form an intent to commit a specific crime are therefore handled with caution.

In the use of insanity as a defence for responsibility this legal philosophy is evident. The question is not "Is the prisoner sane or insane?" but "Does he, through disease of the mind, lack the knowledge of the moral wrongness of the crime itself and its affect on the society of which he is a member?"

Recognizing that there is no definite distinction between sanity and insanity at the borderline and that the question then becomes the determination of the degree of insanity necessary to amount to a legal defence for responsibility, which is the

obliteration of reason, it is almost unbelievable that the criterion of such a technical affliction and even its presence should be matters for law-makers and jury to decide. It would seem that experts on mental diseases such as doctors and psychiatrists should identify that insanity sufficient to excuse criminal responsibility and that the experts on law should dispose of the criminal insane case through the customary legal channels.

While the law, then, has attempted to protect the group from the criminal acts of the insane individual, medicine and the later specialized field of psychiatry have attempted to explain what the disease insanity is that is causal in making certain individuals commit the criminal acts which they do.

With the advent of a firmer belief in the value of the scientific method of studying phenomena, medical men began seeking a more satisfactory explanation of insanity than had hitherto been offered in theological terms. Because of their particular training and limited knowledge of the human body doctors were inclined to assume that all mental abnormality resulted from impairment of the brain. For many years, until in fact about the turn of the last century, insanity and other forms of mental deficiency were believed to be organically caused: that is, either the brain itself never developed to its full capacity or it was damaged by some disease. It was not until the science known as psychology had gained some repute in the early 1900's that doctors commenced to have some confidence

in the psychologist's theory that some abnormal mentality was caused by a functional disorganization of ideas rather than by any organic trouble. Working together, the doctor who studied the biology of the individual, and the psychologist who studied the nature of the mind and individual experience, the two once widely divergent systems of thought were able to be coordinated and produced much more fruitful research. Though it is still impossible to know if some forms of insanity are the results of functional or organic disorders, by tapping the knowledge of both medicine and psychology, the psychiatrists have come to better understand the expression of the man of unsound mind and to probe the possibilities of prevention and treatment and cure of the mentally abnormal.

Of course all of those included as mentally abnormal by medico-psychiatric experts are by no means so unbalanced as to be called insane. To them any person not what would be termed "normally" adjusted to his environment would demonstrate "abnormality". It is the degree of mental abnormality which defines insanity.

In accordance with the ideas of the psychiatrist that the degree of mental abnormality determines insanity the law has tried to compose legal tests which will detect that degree of insanity which will relieve a defendant of responsibility for his criminal acts. But because the ultimate aim of the law is the guardianship of the security of the populace it has not changed noticeably in relation to insanity.

In the formative years of the Massachusetts law on insanity as a defence, the two forces which molded its fundamental structure were the strict theology of New England settlers which insisted on the existence of freedom of will and personal responsibility for actions, and the doctrine of the physicians that true insanity had only an organic basis. In the present day, though the law has escaped somewhat from the theological decree of punishment of all criminals, it has not made a similar advance in supplementing with up-to-date knowledge its out-moded ideas of insanity. The reason often cited for this discrepancy, as has been mentioned before, is that for the good of all it is not possible to have lax laws though they may be favorable to a small number of individuals. The truth of the matter is, that before the law can benefit from medico- psychiatric knowledge it will have to change its conception of the nature of the human individual from a self-directing being to one who is deeply influenced by his social environment as well as by his heredity.

As it now stands legal "insanity" is, strictly, that degree of mental disorder adequate to destroy knowledge of right and wrong. What that degree is has been the disturbing question which has been the turning point of all of the criminal insanity cases in Massachusetts. In contrast to the "socially maladjusted" definition of mental abnormality of the doctors and psychiatrists the law restricts the definition of insanity to refer only to a loss of mental ability to reason and appreciate moral right and

wrong. Deutsch has said that:

> In its socio-legal sense, insanity might be broadly defined as a state of mental disorder of such kind or degree as to render a person socially inefficient and to make it necessary to place him under social control.[12]

From the standpoint of doctors, psychiatrists, and for the good of society "social inefficiency" might appear to be a critical test of insanity. However, as the legal definition of insanity rests now, it has not incorporated unto itself the "socially inefficient" of present day society. In a condensation of a judgment in the case of Commonwealth v. Gordon, 307 Mass. 155, it was said that:

> The broader conception of insanity that medical men may entertain, as distinguished from the lack of mental capacity that excuses a defendant from legal responsibility for crime, has no legal consequence in criminal cases.[13]

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[12]Albert Deutsch, The Mentally Ill in America (New York, 1937), p. 386.

[13]Massachusetts Digest Annotated, vol. 6, Cumulative Annual Pocket (1945), section 48.

CHAPTER III

THE ENGLISH LAW ON INSANITY AS A CRIMINAL DEFENCE

It is only in fairly recent years that there has developed a body of knowledge concerning the nature of insanity. The causes of mental derangement, its effect upon the actions of those whom it afflicts, and the possibilities of its curability, though still not too well-known, at least comprise the basis of a field of investigation which is objectively and scientifically studied.

A few hundred years ago practically nothing was known of disease of the mind excepting as a man was recognized as being totally berserk and consequently very little was known or guessed about the manifestations of a diseased mind in the physical actions of the body. Because of this lack of knowledge of what insanity was and especially a lack of knowledge of its relation to individual actions, it was only in the instance where a person was obviously absolutely insane that he was excused from responsibility for his criminal acts on the ground of insanity. Such was the state of knowledge in regard to insanity and criminal responsibility in England as late as the end of the 18th century.

One of the most prominent interpreters of the English criminal law, Lord Hale, proclaimed total insanity necessary to

excuse responsibility. Referring to this statement Dr. Maudsley said:

> The invisible line which it was so difficult to define was not, let it be noted between sanity and insanity, but between perfect and partial insanity. It was thought no inhumanity towards the defects of human nature to punish as a fully responsible agent a person who was suffering from partial insanity, whatever influence the disease might have had upon his unlawful act.[14]

The requirement of total insanity as a defence became known as the "wild beast" test. In the trial in England of Arnold for murder (Arnold's Case, 16 Howell's State Trials, 764) Justice Tracy said:

> It is not every kind of frantic humour, or something unaccountable in a man's actions, that points him out to be such a madman as is exempted from punishment: it must be a man that is totally deprived of his understanding and memory, and doth not know what his is doing, no more than an infant, than a brute or a wild beast; such a one is never the object of punishment.[15]

The ultimatum of complete madness was soon found to be too stringent an interpretation of insanity necessary to excuse one from legal responsibility. Though there was little additional insight into the characteristics of insanity, the management of criminal trials in which the defendant's sanity was questionable began to show that, in the minds of judges,

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[14]Henry Maudsley, Responsibility in Mental Disease (New York, 1883), p. 90.

[15]Ibid., p. 93.

lawyers, and public officials, there was an inkling of a possible connection between partial disease of the mind and responsibility for criminal acts.

In Hadfield's case, tried in 1800, one of the first efforts was made to excuse a man from criminal responsibility on the ground of partial insanity. Suffering from an insane delusion, Hadfield believed himself specially called upon by God to sacrifice himself so that the world might be saved from destruction. But he also possessed the desire to die, not by his own hand, but by that of another, and so he proceeded to fire upon the King of England knowing his deed would be punished by death. In spite of the fact that the law was not revised to excuse a man on this ground of partial insanity, because his act unquestionably resulted from his insane delusion, Hadfield was acquitted. The difference of opinion was still, as Dr. Maudsley has pointed out previously, concerned with a distinction between perfect and partial insanity and not between sanity and insanity. Legally, total insanity was yet the criterion of responsibility.

The next case pertinent to the test of insanity appeared in 1812 when Bellingham, another victim of insane delusions, was executed for murder. Whereas Hadfield, also laboring under an insane delusion, had been acquitted for his crime, and Bellingham was given the death sentence, the two cases seem on the surface to be contradictory. Actually, however, they were not; the different dispositions of two cases in which both

principals committed criminal acts at a time when each was temporarily insane, effectively points up the unsettled legal attitude, supported by the absence of medical data, toward considering anything less than total insanity as a defence for freedom from criminal liability.

The freeing of Hadfield was a departure from the law far in advance of the thought of the legal administrators of the time. The explanation offered for the conviction of Bellingham insisted that partial insanity, for example insane delusions, was not sufficient to excuse one from criminal responsibility. If the defendant could distinguish right from wrong at all, in any respect, he was liable to punishment for his criminal acts.

This right and wrong test, simply another name for total insanity, was to become, with only slight modification, the critical test of insanity in both England and America in the criminal courts. In 1843 a certain, now in legal circles notorious, McNaughten, killed a man whom he, under the influence of his insane delusion, believed to be defaming his character. Because people in general were shocked to think that an individual could be excused from murder on the ground that such a delusion was insane, the judges were asked to reply to questions concerning the status of insanity, and specifically the status of that form of insanity, insane delusions, as a defence for a man's criminal act.

In partial answer to the question "In what terms ought the question to be left to the jury as to the prisoner's state of

mind at the time when the act was committed?" the Judges stated:

> ...that the jury ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction. That, to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act the accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it that he did not know he was doing what was wrong.[16]

In this reply was embodied a condensation of the English legal conception of insanity as a criminal defence which was to be later copied by the colonists in Massachusetts. Besides impressing upon the jury the legal importance of the presumption of sanity, the Judges tried to clarify the legal test of insanity. The points made were that:

1. The defendant must have been insane at the time of committing the criminal act.
2. The defect of reason must have been directly caused by mental disease, and
3. The mind must have been so affected by this disease that the person either could not know that the act itself which he committed was wrong, or if he did realize the nature of the act he could not understand that it was wrong to commit it.

Once more the right and wrong test has appeared, this time to

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[16]James F. Stephens, A History of the Criminal Law of England (London, 1883), p. 158.

include the original general knowledge of right and wrong and to add another narrower view of insanity by declaring an individual to be insane if disease of the mind has affected his reasoning so that he cannot possibly comprehend the nature of the specific act which he has criminally executed. This is the first outright acceptance of partial insanity as a sufficient defence for criminal responsibility. Before McNaughten's Case, the standard for legal insanity required a lack of discriminatory ability between moral right and wrong in general.

Following up the admittance of partial insanity as a defence Justice Tindal went on to describe the nature of insane delusions equivilent to meet the partial insanity test.

> Making the assumption as we did before, namely, that he laboured under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real.[17]

In other words, when total insanity is lacking, partial insanity will serve as an excuse only if the individual, had he been sane and having acted in the same way, due to circumstances, would have been excused. Using the classic example - a sane person committing the criminal act of murder is excused if he acted in self-defence. So too, if an insane person, suffering from a delusion, murders in self-defence (as he

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[17]Albert J. Harno, Cases and Materials on Criminal Law and Procedure (2nd ed., Chicago, 1939), p. 146.

supposes anyway) he will be excused. But just as a sane man would be liable to punishment if he killed another for libel, so would the insane man under similar circumstances. When the sane man is excused from responsibility for his criminal acts because of the facts the insane man is also excused even though the facts existed only in his mind. The facts, therefore, as they are in the insane man's mind, <u>if true would have excused a sane man</u>, will excuse him. An insane delusion, then, served as a defence only if the defendant had had sense enough to be deluded about facts, which, had they been true, would have been a defence for a person in his normal mind.

The legal parley which resulted from McNaughten's trial established for the first time definitely, but with severe restrictions, a test of <u>partial</u> insanity. At the same time, in this case, the judges modified the right and wrong test applied to poor Bellingham. Instead of declaring a general knowledge of moral right and wrong adequate to uphold the criminal responsibility of a person, they admitted a knowledge of right and wrong in respect to the particular criminal act at the time it was committed as a test of responsibility.

CHAPTER IV

THE SIMILARITY BETWEEN ENGLISH LAW AND COLONIAL THINKING ON INSANITY

The law of England, including the criminal law, was practically appropriated in toto as the fundamental Massachusetts law. Upon the principles set down in the English insanity cases the courts in Massachusetts formulated the legal status of insanity as a criminal defence.

The original common assumption of freedom of will and consequent responsibility for all actions flowing therefrom presupposes that all people have the capacity to make choices. It is obvious to any clear thinking person of this day that, if it can be shown that an individual lacks the innate intelligence to make a sensible choice, then he cannot be praised or blamed for the choices he does make or for his actions resulting from the choices he has made. To the early settlers of the Massachusetts colony, however, the logic of this analysis was not acceptable. They were conscious of the fact that some individuals could not or did not make choices in regard to their behaviour which were socially condoned. But never did they attribute this inappropriateness of choice to any deficiency of mentality. The solution to them, on their level of thinking, was crystal clear. Possession of the individual by the devil was the answer. Anyone who conducted himself in a manner abhor-

rent to the customary manner of acting was not relying on his own initiative but on orders from the devilish spirit which he harbored. So reluctant were they even to suggest that an individual could not direct his own life that in the late 1600's the question in specific cases of poor behaviour was whether the person had freely, of his own accord, invited the devil to take him over and issue the orders. For example:

> The only difference of opinion, during the witchcraft excitement, among the leaders of the three professions, the clergymen, the physicians, the lawyers, and also the statesmen, was in regard to the question whether spectral evidence, the seeing or the professed seeing of the apparitions of the accused in the form of cats, dogs, hogs, birds, etc., was proof that the accused were in VOLUNTARY league with the devil to do evil; that it was proof that they were doing the devil's work was admitted by all parties in every direction; the point of dispute being only this - whether their apparitions were proof that they gave themselves up VOLUNTARILY to the service of the devil, or whether they were taken against their will; and this question was much discussed; but all the weight of opinion, especially of the judges, was in favor of explaining the spectral evidence as proof of voluntary service of the devil on the part of the accused; hence it must be accepted; hence it was accepted; hence the trials, convictions, and executions.[18]

Though it was seldom conceded that an insanely acting man was not himself responsible for his submission to the devil, the veiled intimation that there was at times a question as to the devil's authority in taking over a person was perhaps one of

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[18]George M. Beard, The Psychology of the Salem Witchcraft Excitement of 1692 and its Practical Application to Our Own Time (New York, 1882), pp. 56-57.

the first indications that society was at last beginning to think of the possibility of an abnormal intellect, the presence of which was unaccounted for.

The theory of the early colonists' conception of responsibility for anti-social behaviour was well illustrated in the witchcraft trials at Salem. Several insane children, plagued by visions commonly in the forms of animals such as cats and birds, accused citizens of the town of practising witchcraft on them. In consequence of their testimony twenty innocent people were put to death. The citizens of Salem, notably the physicians, it should be pointed out, not once questioned the authenticity of the childrens' accusations. The controversy, on the contrary, centered on the innocent persons named as witches. The decision for the judges in the trials of the accused was to determine whether or not the witches were <u>voluntarily</u> under the influence of the devil for voluntary acceptance of possession by the devil meant immediate execution. It is ironical that this first advance or change in attitude toward the mentally abnormal, though so slight, should have been made in the consideration of a probably normal group of unjustly accused persons, while the insane were passed over. A rather good phrasing of the situation was written by Dr. Beard in comparing the way of thinking of the Salem citizenry in regard to the witches with the way of thinking of the people in regard to Guiteau, a lunatic accused of murdering a President of the United States a few hundred years later:

> In the case of Guiteau, the physicians and politicians who were first called in to make a diagnosis, mistook the symptoms of insanity for the symptoms of wickedness; an error which is quite as natural for non-experts in insanity in our times as that of the village physician of Salem, Dr. Griggs, in witchcraft times, in attributing the phenomena of trance and insanity to possession of the devil.[19]

Considering the belief in witchcraft and sorcery which the people of Salem held in 1692, and the disinterestedness of doctors in any other than a traditional explanation of insanity, no thought of an inquiry into the behaviour of the insane children was possible. The assumptions upon which the thinking of the day was based allowed for no such investigation. The unjustified murders of innocent people finally ceased, not because of intelligent and logical thinking of cause for such atrocities, but because of the pressure of public opinion. When the children, at their own whim or through the crafty advice of revengeful adults, began to point the finger of guilt at people of prominence and prestige, the horrible trials petered out. Persons of repute and influence, the clergyman's wife for instance, could not, according to any man's reasoning or feeling, be accused of witchcraft.

Gradually, over the years, it came to be recognized that there were certain individuals who were not capable of ordinary reasoning. Their actions were proof of an abnormal mind for it was no longer believed that a power outside of the physical

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[19]Ibid., p. 34.

body could perpetrate its activity or that such people willingly chose to act in such unsocial ways. The medical profession, as far as it had investigated the causes of insanity, had discovered that it issued from disease of the brain, and this theory was received with favor by the translators of the law.

Still the reluctance to relieve individuals of responsibility for their actions remained, especially when they were so threatening to the safety and security of the group that they were looked upon as major crimes. This reluctance, so strongly imbued in the early founders and settlers of Massachusetts, has continued to be one of the outstanding and and persistent factors to enter into every insane criminal case which has come into the Massachusetts courts to the present day. The main question in determining responsibility for crime, has been and still is, deciding on that degree of insanity which is acceptable as an adequate criminal defence.

CHAPTER V

TESTS OF CRIMINAL RESPONSIBILITY AS THEY APPEAR IN MASSACHUSETTS CASES

The most detailed and reliable clarifications, such as they are, of what is thought of as legal insanity in Massachusetts are to be found in the proceedings of criminal trials in which the defendant claimed insanity as a defence.

One of the early cases to appear in Massachusetts, that of Commonwealth v. Abner Rogers, Jr., in 1844, was the first to lay down the law in regard to the test for the criminal responsibility of the insane:

> A man is not to be excused from responsibility, if he had capacity and reason sufficient to enable him to distinguish between right and wrong, as to the particular act he is then doing; a knowledge and consciousness that the act he is doing is wrong and criminal, and will subject him to punishment. In order to be responsible, he must have sufficient power of memory to recollect the relation in which he stands to others, and in which others stand to him; that the act he is doing is contrary to the plain dictates of justice and right, injurious to others and a violation of the dictates of duty.
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> On the contrary, although he may be laboring under partial insanity, if he still understands the nature and character of his act, and its consequences; if he has a knowledge that it is wrong and criminal, and a mental power sufficient to apply that knowledge to his own case, and to know that, if he does the act, he will do

> wrong and receive punishment; such partial insanity is not sufficient to exempt him from responsibility for criminal acts.
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> If then it is proved, to the satisfaction of the jury, that the mind of the accused was in a diseased and unsound state, the question will be, whether the disease existed to so high a degree, that for the time being it overwhelmed the reason, conscience, and judgment, and whether the prisoner, in committing the homicide, acted from an irresistible and uncontrollable impulse: If so, then the act was not the act of a voluntary agent, but the involuntary act of the body, without the concurrence of a mind directing it.[20]

Immediately noticeable is the similarity of thought in this case and in the English cases, especially the one of McNaughten. In a sense the McNaughten trial summarized the English law on insanity as a defence while the case of Rogers, borrowing from McNaughten, outlined the tests of insanity which were to continue in use for many years in Massachusetts.

The principles expounded in this case show, by their very wording, how great was the influence of the English decisions up to that time on insanity as a criminal defence, and the influence of the medical view that insanity was caused by disease of the brain, and as was to be expected, reflected the same theological dogma of freedom of will that was prevalent in 17th century Massachusetts.

In accordance with the cases of Hadfield, Bellingham and McNaughten in England, the Massachusetts law as written in Rogers as to the degree of insanity sufficient to excuse

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[20]Commonwealth v. Rogers, 7 Met. 500.

liability, was strict. It stated, primarily, that the right and wrong test was the test of responsibility though it departed from the English cases which at times in practise refuted the general right and wrong test for the particular right and wrong test when it specifically narrowed it to pertain to the particular criminal act. Thus, if the jury was satisfied that the defendant did not know the difference between right and wrong - did not know that the act for which he was being prosecuted was wrong - he was excused. If he could not see that his act was a crime against society and therefore punishable for the good of the public welfare, he was not responsible on the ground of insanity. Irresistible impulse was thus accepted as an insanity defence if the impulse resulted from mental disease and temporarily impaired the defendant's reason.

The test was further modified in regard to insane delusions and in accordance with McNaughten when the judge declared that, if the defendant was fully aware of the enormity of his crime at the time he did it, even if he were partially insane (insane delusions), he could not be excused. The stringent dictates of the Massachusetts' law insisted that the reasoning ability of the defendant must be impaired.

This demand seems to fit in nicely with the older belief of the Puritanical founders that so long as a man has the ability to reason he should be able to control his actions. The right and wrong test, therefore, stands adamant: mental disease must have affected the individual's power to think in order for

him to be not responsible for his deeds. The idea is well paraphrased in the sentence "If so, then the act was not the act of a voluntary agent, but the involuntary act of the body, without the concurrence of a mind directing it".

Again, as in McNaughten, it was decided that, if the defendant was to be excused from criminal responsibility on the ground of insane delusions, he must be overpowered by a special type of delusion. That is, if the factors of the delusion were true and would constitute a defence for criminal activity for a sane person, the insane man would not be liable to punishment.

> Where the delusion of a party is such that he has a real and firm belief of the existence of a fact which is wholly imaginary, and under that insane belief he does an act which would be justifiable if such fact existed, he is not responsible for such act.[20]

The next important insanity case was that of Commonwealth v. Gilbert in 1895. Here the right and wrong test was further upheld by the presiding judge in his instructions to the jury. After describing the necessary effect of mental disease on the intellectual faculties in these words:

> If his (any defendant's) reason and mental powers were either so deficient that he had no will or conscience, no controlling mental powers, or if through the overwhelming power of mental disease his in-

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[21] Ibid.

> tellectual power was for the time obliterated, then he was not a responsible moral agent, and is not answerable for criminal acts....[21]

he went on to state that:

> He is not to be excused from criminal responsibility if he is able to distinguish between right and wrong - if he is able to understand the nature of the act which he is committing and about which inquiry is made, and to understand the nature and the consequences which ought to flow from it - unless you should find that he was at the time overpowered by some overwhelming impulse proceeding from mental disease, which, for the time being, overcame and obliterated his volition, his will, his conscience, his ability to control himself, and thus led him to commit an act although he knew it to be wrong; or unless, when he committed the act, he was deprived of his own consciousness or power of self-control by some mental disease, so that the act in question, although it might have been done by his hand, was not the product of his mind and did not proceed from his will, and so cannot correctly be said to be really in any sense his act. He is not to be excused, and this defendant is not to be excused, from the consequences of any crime he may have committed, if he had that reason and capacity sufficient to enable him to judge as to the particular act between right and wrong, unless at the time he did it his will, his moral and mental power was so overpowered that what his hand committed was not really done by himself....[22]

This explanation of the right and wrong test elaborates itself into the irresistible impulse test more explicitly than was done in Rogers. Though the test of differentiating between

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[21]Commonwealth v. Gilbert, 165 Mass. 45.

[22]Ibid.

right and wrong is yet the main test of insanity according to this case, it is acceded that it is possible for a man to be so overwhelmed by an impulse caused by mental disease, that though he can distinguish right from wrong in reference to his particular criminal act, he is powerless to do the right thing in the grip of the impulse. It is clear that, whereas, previous to this case, the degree of insanity required for a criminal defence amounted practically to total insanity in that the reasoning ability had to be destroyed or at least damaged by mental disease, either permanently or temporarily, now the loss of CONTROL over the mind to do what is known to be right, if that control is lost because of mental disease, is acknowledged as an equivilent defence. This new twist of loss of control was further noted:

> .....if he had such a mental disease, if his mind was from mental disease in such a state that he could not then distinguish between right and wrong, or if he was the victim of an uncontrollable impulse to do wrong, though he knew it to be wrong, so that he could not refrain from it, if his will was overpowered and his conscience was overpowered, and what his hand did was not really his act, why then he is not to be held responsible for it.[23]

So far the law as interpreted in the Massachusetts cases has set up as the test of legal responsibility the criterion of distinguishing between moral right and wrong in respect to the particular act at the time it was committed. Though they are

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[24]Ibid.

only modifications of this test two other tests have evolved:

1. Partial insanity (insane delusions) and
2. Irresistible impulse resulting from mental disease which temporarily overpowers the reason or causes loss of control over the mind.

In the case of Commonwealth v. Cooper in 1914 this latter disputed test was further discussed. Interpreting the law the statements of the judge read:

> A person abnormally deficient in will power and of retarded mental development, who has killed another person under circumstances that would constitute murder in the first degree if he was mentally responsible, upon an indictment for that crime can be found to have been fully conscious of the criminal character and consequences of his act. That question, whether he was so mentally diseases that he felt impelled to act by a power which overcame his reason and judgment and to him was irresistible, are questions of fact for the jury under proper instructions from the judge in regard to the law.[25]

It ought, at this point, to be noted that the judge is merely the interpreter of the law and that it is the jury, after considering what the law is (as told to them by the judge) and the evidence, who determine as a fact whether the defendant has sufficient mentality to be held legally responsible for his criminal actions.

The judge, in explaining the law in reference to this case to the jurists, has pointed out two guides. The first was that because a person is not normally able to control his mind or if he has not what is considered average intelligence,

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[25]Commonwealth v. Cooper, 219 Mass. 1.

he is not automatically excused from criminal liability. In other words, following the legal theory from the first case which we have discussed, that of Commonwealth v. Rogers, we again revert to the idea that no matter what is medically believed to be insanity sufficient as a criminal defence, the law requires a more acute degree of insanity to exist to render a criminal free of responsibility for his acts. The second rephrasing of the law instructed the jury that if the evidence warranted, the defendant could be released from responsibility if his reasoning ability had been overcome by an irresistible impulse. In contradiction to a previous case, Commonwealth v. Gilbert, in which the overpowering of the control of the mind was considered to amount to insanity, this case reiterates the judgment found in Commonwealth v. Rogers that, if the irresistible impulse overpowered the "reason and judgment" it is to be thought of as that degree of insanity sufficient to excuse the defendant from criminal responsibility.

The fact that there was disagreement between judges on these two views is excellent evidence of the tendency of the law to stick close to the ideas of former times in spite of the efforts of the few who are forward-looking to adjust the administration of justice in accordance with the current scientific knowledge, and taking into account its most practical application in the immediate society.

In both the Rogers and Cooper cases the definition of insanity explicitly requires that, if partial insanity, as

irresistible impulse, is to suffice as a test of insanity for a criminal defence the impulse must overpower the defendant's capacity to think or reason. This demand is in harmony with the right and wrong test which makes it compulsory for the intellectual faculties to be overwhelmingly deprived of their ability to function. The Gilbert case of 1896, on the other hand, reflecting the willingness of legal authorities to learn from the more recently acquired knowledge of the experts on conditions of the mind, expounded the opinion that an individual who through mental disease was not able to make himself do what he knew to be right was just as insane as the man who had lost his knowledge of moral right and wrong. This outspoken case upholding the loss of control over the reason as insanity was the first definite break with the hard bitten theory of the right and wrong test that every person, unless his mind was diseased, had the will power to control his actions.

Such conflict between the definitions of insanity of the different judges continues. No law specifically lists what forms of insanity are adequate to cancel criminal responsibility. It is only after one judge has interpreted "insanity" and his description has been accepted or verified by judges who in the future quote it or elaborate on it, that another form of mental abnormality becomes satisfactory as an insanity defence.

Coming down to one of the most recent Massachusetts cases claiming insanity as a criminal defence we find, much to our

amazement, what with all of the advances made in medicine and psychiatry, that the legal definition of insanity necessary to absolve one of the responsibility of forming a criminal intent, is, not alone as hazy as ever, but almost reverently hanging on to the old theory of the right and wrong test as the absolute test of responsibility. More than ever the conclusion is inevitable that, working with the same basic assumptions of freedom of will and subsequent responsibility for acts ensuing from this freedom, the legal definition of insanity as a defence cannot escape beyond the boundaries set by this theology of our ancestors to adjust itself to include the "socially inefficient" of the day.

In the 1935 case of Commonwealth v. Clark, it was announced that:

> One may be convicted of murder in the first degree though he did not have perfect and complete appreciation of the difference between right and wrong at the time of the crime.[26]

In a way, of course, this falls in line, at least logically, with the past interpretations of the law. For the right and wrong test in Massachusetts was always required to apply to the <u>particular</u> criminal act of the defendant. And, as it was shown that the accused appreciated the likely consequences of his act, then he had passed the particular right and

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[26]Commonwealth v. Clark, 292 Mass. 409.

wrong test to his own disadvantage.

The confused condition of the law on insanity as a defence was once more affirmed when this case also threw out the irresistible impulse test, and it was again stated that mental inferiority was no criterion of responsibility:

> If Miller Clark at the time that he killed Ethel Zuckerman, if you find that he did kill Ethel Zuckerman, knew, or had the mental capacity of knowing, that the act that he was doing was wrong, that he was liable to punishment for it, and realized the consequences of it to Ethel Zuckerman, then ... he is legally responsible for his act.... It never has been held ... that intellectual inferiority, or even partial insanity, is the test to be applied to determine the guilt of a defendant or his legal responsibility for any crime he may have committed.... the point you are to decide is whether, at the moment of the killing, the defendant had sufficient mental capacity to know the act was wrong, to realize what his duty to society was, and what the consequences of his act might be to him and to others.[26]

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[26] Ibid.

CHAPTER VI

INADEQUATE TESTS OF CRIMINAL RESPONSIBILITY

We have seen that, though they leave much to be desired as far as specificity and general acceptance are concerned, there are three tests of insanity suitable as a criminal defence discernible in the Massachusetts law. They are the

1. Right and wrong test
2. Insane delusions or partial insanity test
3. Irresistible impulse test

Several other tests of mental disorder, thought by doctors and experts in diseases of the mind to be sufficient to relieve an individual of legal responsibility for his criminal acts, have not been regarded by the law makers as tests of insanity adequate to make a defendant unanswerable for his crimes.

One of the more recent forms of the irresistible impulse test of insanity, the blinding of a knowledge of right and wrong by heightened emotions, such as anger or passion, has been denied legal approval as a test of insanity. Moral depravity has been classed in the same category as emotional insanity on the ground that, in either circumstance, the individual can distinguish between what is right and what is wrong and should be able to control his desires for satisfaction or revenge.

Another group of insanity defences which have been legally rejected have to do with inferiority, both constitutional and

mental. In the case of Devereaux in 1926 constitutional inferiority was ruled out as a criterion of insanity.[28] Deutsch made a statement in regard to limited mentality that:

> In no jurisdiction in the United States is mental disease or mental defect considered in itself sufficient grounds for excusing a person from criminal responsibility.[29]

In Massachusetts this has been substantiated many times. In Commonwealth v. Cooper the judge instructed the jury:

> The defendant, even if abnormally deficient in will power and of retarded mental development, could be found still to have been fully conscious of the criminal character and consequences of his act.[30]

And in Commonwealth v. Clark the following was presented:

> An expert in mental diseases, called by the defendant, testified, from an examination of the defendant and from hearing him testify, that the defendant is, and was at the time of the killing, a low-grade moron, with an intelligence quotient of 50, afflicted with syphilis of the brain and spinal cord, mentally diseased, and "medically insane", although able to distinguish between right and wrong "to a certain extent", and able to appreciate the fact that, if convicted, he might die in the electric chair. Expert witnesses called by the Commonwealth testified from extended examinations that the defendant is, and was at the time of the killing, the victim of an arrested case of syphilis of the brain and spinal cord, legally

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[28] Commonwealth v. Devereaux, 257 Mass. 391.

[29] Albert Deutsch, The Mentally Ill in America (New York, 1937), p. 391.

[30] Commonwealth v. Cooper, 219 Mass. 1.

> responsible and able to distinguish right from wrong, although one of them qualified the last statement by adding "to a certain extent".[31]

Again, in a later case, that of Commonwealth v. Zilenski, it was decided that, although the defendant was of inferior intelligence, he retained his criminal responsibility.

> The medical evidence falls far short of proving that the mental infirmities of the defendant deprived him of the faculty of consciousness of the physical acts performed by him, of the power to retain them in his memory, and of the capacity to make a statement of those acts with reasonable accuracy.[32]

It is an understatement to observe how striking is the adherence to the old right and wrong test, and the hesitancy or obstinacy in not considering any test of insanity satisfactory unless the defendant's freedom of choice has been obliterated by mental disease.

The same reasoning was operative in excluding another similar inadequate test, that of mental age. In Commonwealth v. Trippi there was a

> ...presumption that a child between 7 and 14 is incapable of forming a criminal intent. This refers to physical, not mental age.[33]

But, for the person over 14, the age when reasoning ability is presumed to be mature,

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[31] Commonwealth v. Clark, 292 Mass. 409.

[32] Commonwealth v. Zilenski, 287 Mass. 125.

[33] Commonwealth v. Trippi, 268 Mass. 227.

> Criminal responsibility does not depend on mental age, but on the defendant's knowledge of the difference between right and wrong.[34]

There is one other kind of insanity whose sufficiency as a defence for crime remains in an undetermined status, and that is insanity caused by intoxication. On the whole drunkenness has not been regarded as a defence. It never excuses the commission of statutory crimes, and frees one from legal accountability in crimes requiring specific intent only if it can be proved that the intoxication was so marked or that by reason of insanity ensuing from the intoxication, the defendant lacked the power to form a specific intent or purpose to commit the crime. In the last fifteen years or so, since there has been serious study of the effects of liquor on the human body and mind, has it been thought humane to look upon the alcoholic criminal as a sick person rather than as a vicious character deserving of the fullest measure of punishment. The attitude toward the criminal, insane from intoxication, is one instance where medical knowledge has profoundly altered the legal thinking about a special type of criminal, at least if not to the point of forming new laws in regard to them, to the extent that the inadequacy of the old laws is admitted and the desire expressed to have some concrete facts as the basis for changing them.

All of the assumptions which have been mentioned in rela-

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[34]Ibid.

tion to the responsibility of criminals crop out in the laws in connection with intoxication as an insanity defence. First of all attention is placed upon whether the consumption of the liquor was voluntary or involuntary. If the defendant drank excessively of his own volition then his drunken condition is no excuse for the criminal acts he commits while in that condition unless he was so drunk that he could not form the intent necessary to make the physical act a crime.

> Temporary insanity produced immediately by intoxication does not destroy responsibility where the accused, when sane and responsible, made himself voluntarily drunk.[35]

When the results of drinking were involuntary, as when insanity such as delirium tremens developed, and the defendant committed a crime he was excused from criminal liability on the ground of insanity, regardless of the cause of the insanity. Because a drinker, even one who deliberately intends to become intoxicated, does not set out to become insane by the use of alcohol and thereby establish a defence for a specific crime which he will then commit, insanity caused by liquor is on a par, as far as a criminal defence is concerned, with insanity caused by any other factors. The law has even gone so far in making use of medical knowledge as to admit that, while there is doubt as to whether insanity per se is inherited, the predisposition to drink is inherited and is as serious a

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[35] Massachusetts Digest Annotated, vol. 6, Cumulative Annual Pocket (1945), section 57.

disease as insanity, if not insanity, and that one who cannot keep from drinking and commits a crime while drunk cannot be held responsible. The intoxication, in short, amounts to a disease which affects his mind and its reasoning ability and over which he has no control. In Commonwealth v. Gilbert it was explained that:

> If the jury are satisfied that the defendant's father was a man of intemperate habits, as testified to by the witnesses in this case, and that the defendant inherited a tendency to drink, which was likely to develop an uncontrollable appetite for intoxicating liquors and had contracted suh appetite, then such appetite is a disease, and intoxicating liquors taken and used to satisfy such an appetite are not taken and used voluntarily; and if the jury are satisfied that the offence charged in this indictment was committed while under the influence of liquors so taken, then the intent necessary to constitute murder is wanting, and the defendant cannot be found guilty, as charged in the indictment.[36]

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[36]Commonwealth v. Gilbert, 165 Mass. 45.

ABSTRACT

The one unquestionable test of insanity which meets the strict demands of the law of Massachusetts that is sufficient to free a person from responsibility for his criminal acts is total insanity. And total insanity, legally, is the inability of the defendant to distinguish between moral right and wrong in reference to his particular criminal act. If he does not have a cognizance of the immoral nature of his deed, if he does not know that his deed is an injustice to himself and to the welfare of the society in which he lives, he is legally insane. The right and wrong test implies that, if an individual understands his relation to the other members of the group of which he himself is a vital part, he will be held responsible if he does an act which is legally wrong.

The test of so-called total insanity has passed through two stages. As has been insinuated, at first the test of the knowledge of right and wrong was general in scope, and was, therefore, a most rigid test.

After a time, however, the test was defined as the capacity to differentiate between right and wrong in regard to the specific criminal act of the defendant. That is the right and wrong test as it stands today.

Even though the right and wrong test is, in theory, the

absolute criterion of insanity necessary to excuse a man from responsibility for his crime, through the gradual recognition of other irresponsible insane types, two modifications of it have become law.

One of these is, actually, a more lenient interpretation of the right and wrong test, and is known as the irresistible impulse test. Its evolution, also, has so far passed through two phases. Primarily it was the right and wrong test in respect to the particular criminal act. If the defendant was so insane that, at the time he committed the illegal act, his reasoning ability was, as a result of the insanity, so deficient that he did not know the act was wrong, he was not held accountable for it.

Later, the irresistible impulse test was altered to include a temporary loss of power to control the reason. In other words, the defendant might have full knowledge of the criminality of his act and yet be entirely helpless in restraining himself from committing it. In the present day many delinquent people are of this stamp. Their reasoning ability is normal or at least is not noticeably defective but they have not the slightest bit of will power to control their desire to do wrong.

The second test of insanity suitable as a shield from criminal responsibility which has made itself apparent in the annuls of the Massachusetts law is one of partial insanity, more commonly called insane delusions. This test requires that

the criminal actor be so insane on one specific subject that for any of his actions in reference to it he cannot be held liable. The law places a restriction upon this test in order to avoid an exploitation of it. A man, acting under an insane delusion, however obsessed he may be by his imagination, is not automatically excused for his criminal acts. If the facts which he has in mind, if true, would be adequate as a defence for a sane person committing the same act, then the insane soul is excused. Clearly, the test is not a help to the insanely deluded person who has not reason enough to be cautious in his delusions.

These tests of criminal responsibility constitute the sum and substance of the Massachusetts law according to the interpretations expounded in actual cases tried in the courts.

To understand the status of the tests of insanity needed to pardon one from criminal accountability in Massachusetts, it is only necessary to know the main source of, and some of the influences on, the law.

The chief source of Massachusetts law was the English law. And by 1843, in England, the basic ideas of the Massachusetts law on insanity were clearly stated. The right and wrong test was beginning to be acknowledged as pertaining to the definite criminal act of the defendant and not just to general morality. The insane delusions test as now accepted in Massachusetts was part of the English legal theory. Only the irresistible impulse test had not been elaborated on, and that was probably because

of the newness of the idea that some people could be caught and swayed in the grip of a power beyond human control.

The greatest and most outstanding influence on the formulation of the laws on insanity as a defence was the mode of thinking of the early law makers. Their theology insisted that every man had the freedom of mind to choose his own ways of acting, and that, because of this capability to select his own course, every man was naturally to be held responsible for his deeds. With an unflinching determination this philosophical belief was held by most persons. Whatever a man did he was accountable for, and so the more wicked his criminal act the more exacting was his punishment meted out to him by society.

Harboring such an unyielding theology the law on insanity as a criminal defence could hardly have been made any different than it was. And considering that assumption as basic to the whole legal theory, even in this era, it is obvious that no major changes in the original body of law have been possible. Only the most conservative of modifications have been accepted.

Having adhered to the theory that every person has freedom of will and is thus responsible for his conduct, the early settlers in Massachusetts, though perhaps unconsciously, believed that every person was capable of exercising his freedom of choice. Of all of the outgrowths of the thinking from the old days which we still cling to, this is the most detrimental. The presumption of the sanity of every man which is so powerful in the law makes it particularly difficult to show that, by

reason of insanity, a defendant cannot be punished for his criminal acts.

The presumption of sanity which in the court has preference over much evidence, together with the very limited tests of insanity make it hard to free from criminal liability any behavioral delinquents other than those who were considered to be such in the society of Massachusetts a few hundred years ago.

The most promising hope of an acquisition in the near future of a body of laws on insanity as a criminal defence which will include a larger number of the mentally abnormal types found in our society today, lies in the increasing willingness shown by the law makers to try to rewrite the rules of the criminal law to conform more accurately and fairly with the modern medico-psychiatric view of the nature of the individual.

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